80202-5

NO. 52447-0-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

WILLIAM ROBINSON,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE CATHERINE SHAFFER

SUPPLEMENTAL BRIEF OF RESPONDENT

NORM MALENG
King County Prosecuting Attorney

ANDREA R. VITALICH
Senior Deputy Prosecuting Attorney
Attorneys for Respondent

King County Prosecuting Attorney
W554 King County Courthouse
516 3rd Avenue
Seattle, Washington 98104
(206) 296-9650

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A. ISSUES PRESENTED

Blakely v. Washington holds that a sentencing court generally may not exceed the standard range unless the facts aggravating the sentence have been found by a jury beyond a reasonable doubt. However, an exception to this general rule applies when the defendant has stipulated to the facts supporting the exceptional sentence. Moreover, when a stipulation to facts relevant to sentencing is an integral part of a plea agreement, a defendant who is not challenging his plea agreement is not entitled to relief under Blakely.

In this case, the defendant entered a plea agreement in which he stipulated to facts for sentencing purposes knowing that the State was seeking an exceptional sentence. The defendant is not challenging the validity of his plea agreement; nonetheless, he claims he is entitled to a standard-range sentence under Blakely. Should these claims be rejected?

B. STATEMENT OF THE CASE

The defendant, William Robinson, pled guilty to three counts of vehicular assault for the August 21, 2002 crash that injured Zachary, Olivia, and Kristina Moss as they stood on a sidewalk in Des Moines, Washington. CP 7-30. As part of the plea agreement,

Robinson stipulated to the facts contained in the certification for determination of probable cause, in the prosecutor's summary, and in Appendix C "for purposes of this sentencing." The State agreed to file no further charges.[1] CP 27. The State also gave notice it was seeking an exceptional sentence of 60 months on Counts I and II, and a high-end sentence of 20 months on Count III. CP 10.

At sentencing on May 2, 2003, the court imposed an exceptional sentence of 96 months on Count I, and 60 months apiece on Counts II and III, to be served concurrently. CP 63. The sentencing court relied upon the facts Robinson had stipulated to as part of the plea agreement in imposing the exceptional sentence. 5/2/03 RP 5, 46-54; CP 68-70.

Robinson appealed, and sought accelerated review of his exceptional sentence. Commissioner Ellis affirmed Robinson's sentence, and this court's mandate issued on March 19, 2004.

The Supreme Court issued its decision in Blakely v. Washington, ___ U.S. ___, 124 S. Ct. 2531, 159 L. Ed. 2d 403

[1] Robinson questions whether any further charges could have been filed as a result of this incident. Supplemental Brief in Support of Motion to Modify, at 27. Although this issue is not seriously in dispute, as Robinson does not question the validity of his plea agreement, the stipulated facts support a charge of felony hit and run because Robinson kept driving after crashing into the Moss family and had to be returned to the crime scene by a concerned bystander. CP 25; RCW 46.52.020(4)(b).

(2004), on June 24, 2004. Robinson filed a motion to withdraw this court's mandate, and that motion was granted on November 1, 2004. This court then granted Robinson's motion to modify the Commissioner's ruling, and ordered supplemental briefing from both parties regarding the impact of Blakely.

C. ARGUMENT

1. BLAKELY DOES NOT APPLY BECAUSE THE DEFENDANT STIPULATED TO THE FACTS JUSTIFYING HIS EXCEPTIONAL SENTENCE AS PART OF AN INTEGRATED PLEA AGREEMENT.

Robinson claims that his sentence must be reversed under Blakely, and that his case must be remanded for resentencing within the standard range. In so arguing, Robinson challenges neither the validity of his plea agreement nor the stipulation to facts incorporated into that agreement. Rather, Robinson appears to claim that because his stipulation did not guarantee that an exceptional sentence would be imposed, Blakely requires the imposition of a standard-range sentence while leaving the remainder of his plea agreement intact. See Supplemental Brief, at 8-31.

This claim is without merit. Blakely expressly provides that an exceptional sentence may be imposed without a jury finding when the defendant stipulates to the facts supporting that sentence.

Moreover, the result in this case is directly controlled by this court's recent decision in State v. Hagar, ___ Wn. App. ___, 105 P.3d 65 (2005). The defendant's sentence should be affirmed.

In Blakely, the Supreme Court reaffirmed its prior holding from Apprendi v. New Jersey, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000): "Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." Blakely, 124 S. Ct. at 2536 (quoting Apprendi, 530 U.S. at 490). The Court then held that "the 'statutory maximum' for Apprendi purposes is the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict *or* admitted by the defendant[.]" Blakely, 124 S. Ct. at 2537. Therefore, because the aggravating facts in Blakely's case were not admitted by the defendant and had not been proven to a jury, the Court concluded that "the State's sentencing procedure did not comply with the Sixth Amendment[.]" Id. at 2538.

In so holding, the Supreme Court recognized that an exceptional sentence may be imposed without a jury finding "on the basis of the facts . . . *admitted by the defendant*[.]" Id. at 2537 (emphasis supplied). Moreover, the Court specifically

acknowledged that a jury finding is not required when a defendant stipulates to relevant facts for sentencing purposes as part of a plea agreement:

> [N]othing prevents a defendant from waiving his Apprendi rights. *When a defendant pleads guilty, the State is free to seek judicial sentence enhancements so long as the defendant either stipulates to the relevant facts or consents to judicial factfinding.*

Blakely, 124 S. Ct. at 2541 (emphasis supplied).

In this case, Robinson pled guilty and stipulated to the relevant facts for sentencing purposes knowing that the State was seeking an exceptional sentence. CP 7-30. Therefore, Blakely expressly provides that Robinson's exceptional sentence is proper without additional factfinding by a jury, and Robinson's claims to the contrary are without merit.

Furthermore, Robinson is not seeking to withdraw his plea agreement, and he does not claim that his stipulation was invalid. Rather, Robinson appears to argue that the plea agreement and concurrent stipulation have no effect on his claims under Blakely, and that he is entitled to resentencing within the standard range, plea agreement and stipulation notwithstanding. These claims are directly contrary to the express language of Blakely, and contrary to this court's decision in Hagar.

In Hagar, this court considered whether Blakely requires reversal of an exceptional sentence based on facts the defendant had stipulated to as part of a plea agreement. Hagar, like Robinson, did not seek to withdraw his plea. Rather, like Robinson, Hagar argued that Blakely required remanding his case for resentencing within the standard range, plea agreement and stipulation to facts notwithstanding, on the theory that a standard range sentence constituted "specific performance" of the plea agreement under Blakely. Hagar, 105 P.3d at 67-68. This court rejected Hagar's claim, and noted from the outset that the stipulation was an integral part of the plea agreement:

> We start with the observation that Hagar's stipulation to facts was an integral part of a plea agreement that he has not shown to be divisible. Both parties to the agreement received benefits as a part of a package that they negotiated and then presented to the court. Given the stipulation's integral role in the plea agreement, the stipulation and resulting sentence cannot be challenged apart from the agreement itself.

Hagar, 105 P.3d at 67. Such is the case here as well, and Robinson's claims should be similarly rejected.

Nonetheless, Robinson asserts that Hagar "should be repudiated," and that the stipulation in this case was not "integral" to the plea agreement because the stipulation did not guarantee

that an exceptional sentence would be imposed. Supplemental Brief, at 18. This argument is specious. While Robinson is correct that his stipulation to real facts did not guarantee that the sentencing court would exceed the standard range, there are no circumstances wherein the parties to a plea agreement could legally bind a sentencing court to a guaranteed sentence of any kind, whether standard range or otherwise. Indeed, if such an agreement were attempted, it would constitute a separation of powers violation. Thus, taking Robinson's argument to its logical conclusion, there could be no case where a defendant's stipulation to facts could be considered "integral" to the plea agreement because in no case could such a stipulation serve to guarantee a particular result at sentencing.

Contrary to Robinson's claims, his plea agreement – including the stipulation to facts – is a fully integrated contract. See State v. Turley, 149 Wn.2d 395, 69 P.3d 338 (2003) (absent objective manifestations of intent to the contrary, plea agreements are integrated contracts). As part of this integrated contract, Robinson stipulated to facts "for purposes of this sentencing," knowing that the State was seeking an exceptional sentence. CP 27. Robinson does not challenge the validity of his plea

agreement, nor does he challenge the validity of the stipulation included in its terms. Therefore, under Blakely and Hagar, Robinson's exceptional sentence should be affirmed.

2. THIS COURT NEED NOT ADDRESS THE DEFENDANT'S REMAINING ARGUMENTS.

Robinson makes a number of other claims, including: 1) that Blakely error is not subject to harmless error analysis; and 2) that a jury cannot be convened to find aggravating facts on remand due to statutory and constitutional constraints. Supplemental Brief, at 31-42. But because there is no basis to reverse Robinson's sentence, these arguments need not be addressed.

D. CONCLUSION

The defendant stipulated to the facts that form the basis of the exceptional sentence he received. Therefore, Blakely v. Washington does not apply, and the defendant's exceptional sentence should be affirmed.

DATED this 28th day of March, 2005.

RESPECTFULLY submitted,

NORM MALENG
King County Prosecuting Attorney

By: _____
ANDREA R. VITALICH, WSBA 25535
Senior Deputy Prosecuting Attorney
Attorneys for the Respondent
WSBA Office #91002

Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Oliver Davis, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the Supplemental Brief of Respondent, in STATE V. WILLIAM ROBINSON, Cause No. 52447-0-I, in the Court of Appeals, Division I, for the State of Washington.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

C Brame
Name

3/28/05
Date

Done in Seattle, Washington